

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

ADJUSTACAM, LLC,	)	Civil Action
	)	
Plaintiff,	)	No. 6:10-cv-00329-JRG
	)	
v.	)	Judge Rodney Gilstrap
	)	
AMAZON.COM, INC., <i>et al.</i> ,	)	
	)	<b><u>Electronically Filed</u></b>
Defendants.	)	

**DEFENDANTS NEWEGG INC., NEWEGG.COM, INC., & ROSEWILL, INC.'S  
RESPONSE TO ADJUSTACAM'S NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants Newegg Inc., Newegg.com, Inc., and Rosewill, Inc. (collectively, "Newegg") hereby respond to Plaintiff AdjustaCam, LLC's ("AdjustaCam") Notice of Supplemental Authority (Dkt. No. 810, "Adj. Notice").

AdjustaCam submits the Federal Circuit's nonprecedential opinion in *Site Update Solutions, LLC v. CBS Corp.*, No. 2015-1448, 2016 U.S. App. LEXIS 1641 (Fed. Cir. Feb. 1, 2016), which affirmed the district court's denial of Newegg's fee motion after the case had been remanded due to the intervening *Octane Fitness* decision. That case involves very different facts, as AdjustaCam recognizes because AdjustaCam does not contend that the *Site Update* decision should dictate the outcome of Newegg's present fee motion. Rather, in its Notice AdjustaCam only quotes a portion of the *Site Update* opinion that pertains to the standard for reviewing § 285 decisions *on appeal*, which has no bearing on the *Octane Fitness* standard for deciding Newegg's renewed fee motion in this Court. Adj. Notice, at 1-2 ("[The Federal Circuit's] review is limited to determining whether the district court based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or otherwise abused its discretion.") (quoting *Site Update*, 2016 U.S. App. LEXIS 1641, at \*5). Nothing in AdjustaCam's Notice pertains to the issues surrounding the *Site Update* case that were discussed in the parties' briefing on Newegg's present fee motion,

which concerned only the proper scope of analysis *on remand* in light of AdjustaCam's meritless assertions of waiver by Newegg. *See* Dkt. No. 804, at 1-2.

Another critical distinction is the fact that the posture of *Site Update* on remand was quite different from the posture here. Following the original appeal in *Site Update*, the Federal Circuit remanded the case to the same district court judge who issued the original order for reconsideration in light of *Octane Fitness* via a two-sentence, nonprecedential summary order.<sup>1</sup> Here, before remanding this case for reconsideration in light of *Octane Fitness* to a different judge than issued the now-vacated opinion, the Federal Circuit issued a formal opinion discussing the substance of the Newegg's arguments, and provided some guidance "that Newegg and Sakar's arguments appear to have significant merit, particularly their argument that AdjustaCam's continued pursuit of its infringement claims after the district court construed the claim term 'rotatably attached' was baseless." *Adjustacam, LLC v. Newegg, Inc.*, No. 2013-1665, 2015 U.S. App. LEXIS 16547, at \*8-9 n. 2 (Fed. Cir. Sept. 17, 2015).

Respectfully submitted,

**THE WEBB LAW FIRM**

Dated: February 15, 2016

s/ Daniel H. Brean

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*and*

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<sup>1</sup> *Site Update Solutions, LLC v. Accor N. Am., Inc.*, 556 Fed. Appx. 962 (Fed. Cir. 2014) ("The Supreme Court decided *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 188 L. Ed. 2d 816, 110 U.S.P.Q.2d 1337 (U.S. 2014) on April 29, 2014. It Is Ordered That: The district court's order denying declaration of an exceptional case and award of attorneys' fees is vacated and the case is remanded for further proceedings in light of the Supreme Court's decision.").

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*Counsel for Defendants Newegg Inc.,  
Newegg.com, Inc., and Rosewill, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 15, 2016, I electronically filed the foregoing **DEFENDANTS NEWEGG INC., NEWEGG.COM, INC., & ROSEWILL, INC.'S RESPONSE TO ADJUSTACAM'S NOTICE OF SUPPLEMENTAL AUTHORITY** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

**THE WEB LAW FIRM**

s/ Daniel H. Brean  
Counsel for Defendants Newegg Inc.,  
Newegg.com, Inc., and Rosewill, Inc.